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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

RODERICK BAZIL et al.,

Plaintiffs and Appellants,

v.

CHARLES GIBSON et al.,

Defendants and Respondents.

G055877, consol. w/ G056204

(Super. Ct. No. 30-2016-00830460)

O P I N I O N

Appeal from a judgment, amended judgment and post-judgment order of the Superior Court of Orange County, Michael Brenner, Judge. (Retired judge of the Orange Sup. Ct., assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Craton, Switzer & Tokar, Curt R. Craton and Robert E. Tokar for Plaintiffs and Appellants.

Freidberg Law Corporation and Edward Freidberg for Defendants and Respondents.

* * *

Roderick Bazil and his mother, Ruby Bazil, appeal from the trial court's entry of judgment in favor of Charles Gibson and his chiropractic consulting company, Gibson Management Consultants, Inc., (collectively, Gibson) after the jury's special verdict against the Bazils on their claims for intentional misrepresentation and breach of fiduciary duty. The Bazils sought in asserting these claims to recover their $100,000 loss in stock in a nutritional supplement startup company that failed.[1]

On appeal, the Bazils challenge the sufficiency of the evidence to support the jury's factual findings that 1) any failings by Gibson as Bazil's "long-term trusted mentor, business coach, and advisor" for Bazil's chiropractic office were not a substantial factor in the $100,000 investment loss, and 2) Gibson did not act on behalf of a party (Gibson himself) with interests adverse to Bazil when Gibson made a losing investment in the same supplement company. The Bazils further assert the trial court erred in failing to define the term "substantial factor" for the jury, and the court erred in denying their motion for a new trial on grounds of instructional error or lack of evidence to support the jury's verdict. Finally, they contend the court erred in precluding them from introducing evidence of asserted common law securities duties and violations, which they argue should have informed the jury of the scope of Gibson's fiduciary duties as Bazil's mentor, advisor, and business coach. As we explain, none of these contentions provide a basis for reversal. We therefore affirm the judgment.

[1] The parties in their briefing use "Bazil" in the singular to refer to Roderick and, for brevity and clarity, we do the same.

FACTUAL AND PROCEDURAL BACKGROUND

We set out the facts in the light most favorable to the jury's verdict, as we must under the governing appellate standard. (*Delgado v. Trax Bar & Grill* (2005) 36 Cal.4th 224, 229.) "'All of the evidence most favorable to the respondent must be accepted as true, and that unfavorable discarded as not having sufficient verity to be accepted by the trier of fact.'" (9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 370, pp. 427-428.)

The parties stipulated for trial that "Charles Gibson provided business advice to Dr. Roderick Bazil for more than ten years prior to April 22, 2011, related to the operation of his chiropractic business." Testimony at trial showed the relationship spanned 18 years, terminating in 2013. According to Gibson, a successful chiropractor, the agreement was limited to providing advice on how to run a chiropractic business, it did not extend to investment decisions. Gibson and Bazil met monthly, and Gibson made recommendations regarding chiropractic procedures, front office procedures, marketing, insurance billing, and collections.

In 2011, Bazil's mother had $300,000 in a joint savings account for Bazil to invest. Bazil testified that he asked Gibson "what he suggested" regarding investing the funds. Bazil acknowledged in his testimony that "giving [him] suggestions about investments . . . wasn't part of [Gibson's] job in mentoring" him. Bazil testified, "I did understand that," and "I can't say I thought it was part of his job, but he volunteered the information."

Gibson told Bazil he was not an investment advisor and the safest investment he had made was with Berkshire Hathaway. He also told Bazil he had an agreement with a new startup company to raise capital for the company's launch. The company, BodHD, Inc., planned to sell nutritional supplements through direct marketing campaigns.

Gibson testified, "I did tell him" that "I was getting shares for helping raise money." Bazil, for his part, acknowledged that Gibson "did tell me that he had had success with Berkshire Hathaway." But Bazil could not "say yes or no" as to whether Gibson ever told him "before April the 7th, 2011, that he had had any success in investing in stocks, bonds, or other securities."

Gibson also gave Bazil the name of a stockbroker. The stockbroker, Mark Dobrilovic, testified he would have told Bazil what he said to all new clients: "I discuss risk, explain to clients past performance doesn't guarantee future results. . . . It's possible for it to lose money. [¶] Whatever disclosures were [*sic*] generally legally responsible to provide people, investing involves risk. It's not guaranteed."

Gibson provided, and Bazil admitted he received, BodHD's business plan. The plan stated, "BodHD is run by a visionary and highly experienced management team with a deep and demonstrated passion for improving health and well-being and a history of success in businesses that leverage direct sales marketing as a distribution channel." The plan described BodHD's leadership: "The management team has a combined 100 years of experience with the direct sales marketing method and has built a number of successful companies from startup to $50 million in revenues in their first 5 years of business. They are primed to replicate this success again with BodHD."

The plan highlighted the expertise of one of BodHD's principal figures, Ray Grimm: "With over 30 years of experience in the nutrition and direct sales business, Ray has launched three nutrition and weight loss companies that each has grossed over $50 million in annual sales within 5 years of startup." Bazil testified he was impressed with Grimm's background.

Bazil recalled that he knew Gibson had sold Tupperware in college, but Bazil did not know if Gibson had any retail experience after he became a chiropractor. To Bazil's knowledge, Gibson had not sold "products, food, health products" of any kind to the public.

Bazil testified Gibson sent him a letter in April 2011 suggesting as a "worst-case scenario" an investment return with a 3.75 multiplier within five years. Gibson's letter also stated, "If the company is one-half as successful as they project it would be a great investment opportunity."

Later that month, Bazil and Gibson met Grimm at BodHD's offices. Gibson testified the meeting included a review of BodHD documents and that Grimm discussed the investment's "risk elements" with them.

Bazil knew BodHD was a startup company, which interested him because it presented an opportunity "to get in on the ground floor and hopefully make a big profit," as compared to investing in "General Motors or General Electric or Apple." He "didn't think about . . . issues" like "what its record was" or the lack of any "historical earnings record." Bazil only knew Gibson "said they had a product, they were ready to go to market. That's about as far as I took it."

Bazil's expert witness in financial matters recognized that projections stated in business plans are only forecasts that "may be right [or] may be wrong," with no guarantee of success. The expert testified BodHD's projected annual sales in three years appeared to be "guesstimates."

Bazil acknowledged one cannot "predict the future," but testified he relied on Gibson's confidence in the company. He testified that "the way it was presented to me was that it wasn't speculative, it was a sure thing."

When asked, "when you have a company that's never done business before, that the projections they make are just that, they're estimates," Bazil interjected, "Well, Ray Grimm had certainly done business before. He was running this company. And to me, they were at a point where they couldn't lose, as described to me. Now, I know other companies are at high risk. I saw no risk in this business venture." In response to the question, "So you thought because Ray Grimm had successes in similar-type companies

in the past, that this was a sure thing; is that it," Bazil answered, "No. I thought because Dr. Gibson said there was no risk, then there was no risk."

Gibson's agreement with BodHD called for him to use his best efforts to introduce the company to prospective investors in the chiropractic community with the goal of raising between $500,000 and $700,000 of equity capital for BodHD. As compensation, Gibson would be paid 10 percent of the capital he helped raise or, at his election, he could take his fee in company stock. Gibson testified he told Bazil he was helping BodHD raise money in exchange for shares, but Bazil disputed the disclosure. Gibson had no other role in the company.

Based upon the investors Gibson brought to BodHD, he was entitled to receive $16,000 under the terms of the contract. Instead of taking the cash, he opted to take his compensation in BodHD stock. Gibson testified he took all his earnings in stock "[b]ecause I thought there was a pretty good chance that this company was going to do really well, and it would be an excellent opportunity."

After the Bazils dismissed their cause of action for negligent misrepresentation because it exceeded the statute of limitations, the case went to the jury on their two remaining causes of action, intentional misrepresentation and constructive fraud. Their constructive fraud claim essentially asserted Gibson breached a fiduciary duty he owed the Bazils in two ways. First, he failed to use reasonable care as a fiduciary, based on a "trusted, confidential relationship" as "Bazil's long-term trusted mentor, business coach, and advisor"; second, based on the same relationship, Gibson breached his fiduciary duty to act with undivided loyalty.

The parties prepared special verdict questions for the jury to answer in returning their verdict. Despite making several findings in the Bazils' favor, the jury returned a defense verdict. On the Bazils' first cause of action, the jury found Gibson knowingly made a false representation to Bazil with the intent to induce Bazil to invest in

BodHD, but then found Bazil did not reasonably rely on the unidentified misrepresentation.

On the Bazils' fiduciary duty claim for failure to use reasonable care, the jury found that Gibson was Bazil's long-term trusted mentor, business coach, and advisor; that he induced Bazil to invest in BodHD; that he failed to act as a reasonably careful mentor, business coach, and advisor would have acted under the same or similar circumstances; and that the Bazils suffered harm. The verdict form did not specify the harm, but it presumably was the loss of their $100,000 investment in BodHD when the company failed. The jury, however, specifically found Gibson was not "a substantial factor in causing" the Bazils' harm.

As to a fiduciary duty of undivided loyalty, the jury similarly found Gibson was Bazil's long-term trusted mentor, business coach, and advisor in a trusted, confidential relationship. Nevertheless, the jury found Gibson did not knowingly act against Bazil's interests in connection with the investment in BodHD, and did not act on behalf of a party whose interests were adverse to Bazil in connection with the BodHD investment.

The trial court entered judgment on the jury's verdict, denied the Bazils' motion for a new trial, and entered an amended judgment. The Bazils appealed both judgments, and the order denying their motion for a new trial.

DISCUSSION

1. *Sufficiency of the Evidence that Gibson Did Not Cause the Bazils' Harm*

The Bazils challenge the sufficiency of the evidence to support the jury's conclusion on their breach of fiduciary duty claim that Gibson's conduct was not a substantial factor in causing them harm. Specifically, on the Bazils' claim for "Breach of Fiduciary Duty—Failure to Use Reasonable Care," the jury in its special verdict

responded "No" to the question: "Was Charles Gibson's conduct a substantial factor in causing Roderick Bazil and Ruby Bazil's harm?"

On appeal, we cannot reweigh the evidence. To the contrary, we must view the record in the light most favorable to the prevailing party, resolving all conflicts in favor of the verdict. (*Regalado v. Callaghan* (2016) 3 Cal.App.5th 582, 595-596 (*Regalado*).) "'Our authority begins and ends with a determination as to whether, on the entire record, there is *any* substantial evidence, contradicted or uncontradicted, in support of the judgment.'" (*Ibid.*)

As the plaintiffs below, the Bazils' appellate burden is particularly heavy. When the party challenging the verdict bore the burden of proof at trial, the question for the reviewing court is whether the evidence *required* a verdict for the appellant as a matter of law. (*Roesch v. De Mota* (1944) 24 Cal.2d 563, 570-571; e.g., *Vieira Enterprises, Inc. v. McCoy* (2017) 8 Cal.App.5th 1057, 1074.) It is not enough that reasonable minds may disagree; when two or more inferences can be reasonably drawn from the evidence, the appellate court may not substitute its judgment for the trier of fact's judgment. (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 571.)

As a preliminary matter, Gibson challenges a different finding the jury made in the same special verdict form that the Bazils' challenge. In the jury's special verdict regarding the Bazils' claim for "Breach of Fiduciary Duty—Failure to Use Reasonable Care," the jury found Gibson was "Roderick Bazil's long-term trusted mentor, business coach, and advisor *in a trusted, confidential relationship*." (Italics added.) Gibson contends no evidence showed he had a fiduciary relationship with Bazil for purposes of providing investment advice and therefore no responsibility for any investment decisions Bazil may have made after speaking to him. Gibson does not dispute that he had an 18-year contractual relationship with Bazil. Indeed, the parties stipulated at trial that "Charles Gibson provided business advice to Dr. Roderick Bazil for

more than ten years prior to April 22, 2011, related to the operation of his chiropractic business."

Gibson contends, however, that a business relationship for purposes of providing advice on running a chiropractic office does not create a fiduciary duty of care concerning investment discussions with Bazil or his mother. In other words, Gibson argues that he was not the Bazils' investment advisor, citing case law to suggest that "[t]he key factor in the existence of a fiduciary relationship lies in control by a person over the property of another." (*Apollo Capital Fund, LLC v. Roth Capital Partners LLC* (2007) 158 Cal.App.4th 226, 246.) Gibson emphasizes he told Bazil that "I'm not an investment advisor" and "the only successful investment" he had was "with Berkshire Hathaway," which Gibson "highly recommended." Gibson argues this did not make him an investment advisor, which explains why he gave Bazil the name of a stockbroker, Mark Dobrilovic, to consult.

For their part, the Bazils contend "the undisputed evidence established that Gibson presented the BodHD investment to Bazil with regularity and received compensation for doing so" in the form of shares of BodHD. They argue that regardless of whether Gibson's status as a "long-term trusted mentor, business coach, and advisor" established a "trusted, confidential relationship" as framed by the special verdict question, Gibson met the definition of an investment advisor (Corp. Code, § 25009) and, therefore, owed them a corresponding fiduciary duty. They rely on the statutory definition of an "investment adviser" as a person who, "for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing or selling securities . . . ." (*Ibid.*) The Bazils insist Gibson's "business" included advising them on the BodHD investment.

We need not resolve this difference of opinion. We do not reach Gibson's appellate challenge to the jury's confidential relationship finding because, contrary to the

Bazils' claim, substantial evidence supports the jury's determination Gibson's conduct was not a substantial factor in their harm. In other words, even if there was a confidential relationship supporting a fiduciary duty of care concerning investment advice, the jury's finding that Gibson played no substantial factor in causing the Bazils' financial loss defeats their claim for a breach of fiduciary duty. To recover on a breach of fiduciary duty claim, the plaintiff must demonstrate "the existence of a fiduciary relationship, its breach, and damage proximately caused by that breach; the absence of any one of these elements is fatal to the cause of action." (*LaMonte v. Sanwa Bank California* (1996) 45 Cal.App.4th 509, 517 (*LaMonte*).)

Proximate cause and a cause that is a substantial factor in a plaintiff's injury are synonymous terms. "To be considered a proximate cause of an injury, the acts of the defendant must have been a 'substantial factor' in contributing to the injury." (*Grotheer v. Escape Adventures, Inc.* (2017) 14 Cal.App.5th 1283, 1303.) A defendant's negligence "is a substantial factor" in causing a plaintiff's harm "if the injury would not have occurred" without that negligence. (*Ibid.*) In other words, the plaintiff's damage must be "proximately caused by [the] breach." (*LaMonte*, *supra*, 45 Cal.App.4th at p. 517.)

The flaw in the Bazils' appellate challenge on this issue is that they do not explain how or why the jury was required to conclude any particular breach of fiduciary duty caused them harm. Instead, they assert Gibson was a substantial factor in causing them harm because they would not have lost their funds if he had not told them about BodHD. In other words, their theory seems to be Gibson breached a fiduciary duty to them by alerting them to an investment opportunity. Specifically, they assert that Gibson "presented the BodHD investment to Bazil," and "recommended that Bazil invest in BodHD."

Phrased differently, they argue Gibson was a substantial factor in causing their loss because, absent his introduction, they "never would have known of BodHD or

invested in BodHD." They add "[t]he jury received no evidence at trial that Bazil knew of BodHD or the investment opportunity in BodHD except as a consequence of Gibson presenting it to Bazil."

Gibson highlights evidence at trial contradicting the Bazils' claims that he "alone presented the BodHD investment to Bazil" and that they "received no other information about the BodHD investment from any person or source other than Gibson." In particular, Gibson argues the evidence showed the Bazils received and reviewed the BodHD business plan and that Bazil attended a meeting held at the BodHD offices by its chief promoter, Grimm, which Gibson also attended. Gibson testified that at the meeting Grimm "reviewed all of the documents [and] risk elements" with Bazil, including "the risk involved" in the investment.

The jury reasonably could have concluded, as Gibson suggests, that the "meeting with Grimm far transcended anything Gibson, who was not an expert in the business of developing companies and knew nothing about retailing nutritional products, could have told him." The fact that Bazil first threatened only Grimm with litigation, not Gibson, supports the conclusion Bazil did not initially view Gibson as a substantial factor in his loss. Bazil's initial attorney testified that Grimm responded to the litigation threat by stating "they had no assets with which to pay." It was not until nearly three years later that the Bazils retained new counsel and sued Gibson. Under the standard of review, we must infer this supports the jury's conclusion Gibson was not a substantial factor in causing them harm, but simply a solvent target.

More fundamentally, there is no basis to reverse the judgment when the Bazils base their appellate claim that the jury was *required* to conclude Gibson was a substantial factor in causing their loss based primarily on the fact he told them about BodHD. There is no reasonable basis in the record to conclude that introducing someone to an investment opportunity constitutes a breach of fiduciary duty. Nothing in Gibson's chiropractic mentoring and business coach relationship with Bazil prevented the two men

from discussing investment options, particularly where Bazil sought out Gibson's opinion. Nothing suggests BodHD was such a toxic investment that just discussing it as a possible investment constituted a breach of duty for an investment advisor, even assuming Gibson fell into that category. Consequently, the Bazils' challenge to the sufficiency of the evidence to support the jury's verdict on their fiduciary duty claim for failure to use reasonable care is without merit.

2. *Alleged Instructional Error*

The Bazils also contend the trial court erred in failing sua sponte to provide the jury with a pinpoint instruction defining the term "substantial factor" for causation purposes. They note the existence of a form instruction concerning negligence that states: "A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It does not have to be the only cause of the harm." (Judicial Council of California Civil Instructions (2018) [hereafter CACI], No. 430.) The Bazils contend that for purposes of their fiduciary duty claim, the trial court's "failure to define the term 'substantial factor' for the jury caused the errant finding on that element that, as discussed, is not supported by substantial evidence."

As noted, however, the evidence supports the jury's substantial factor finding. The jury reasonably could conclude that where Grimm disclosed the risks inherent in their investment, any failure by Gibson to provide appropriate investment advice was not a substantial factor in their harm.

Moreover, the Bazils' instructional challenge fails. """'In a civil case, each of the parties must propose complete and comprehensive instructions in accordance with his theory of the litigation; if the parties do not do so, the court has no duty to instruct on its own motion.' [Citations.]""" (*Metcalf v. County of San Joaquin* (2008) 42 Cal.4th 1121, 1130-31 (*Metcalf*).) The Bazils excuse their failure to request CACI No. 430's

"substantial factor" definition on grounds that, "when a lawyer has the infrequent occasion to participate in a jury trial, it is asking too much to expect him or her to read instructions in unrelated causes of action on the off-chance that a definition might appear somewhere unexpected to aid in the case at hand." We disagree as the applicable rule is well-established. A "[p]laintiff's failure to request any different instructions means he may not argue on appeal the trial court should have instructed differently." (*Metcalf, supra,* 42 Cal.4th at p. 1131.)

The Bazils participated in drafting the jury instructions and the special verdict forms submitted to the jury. They voiced no objection to the instruction and verdict forms. The instruction accurately set forth California law. A defendant's "culpable acts or omissions on which a claim of legal fault is based" must be a "substantial factor" in the plaintiff's injury. (CACI No. 430 ["Causation: Substantial Factor"], Directions for Use, p. 283.)

As governing case law explains, "California has definitively adopted the substantial factor test of the Restatement Second of Torts for cause-in-fact determinations. [Citation.] Under that standard, a cause in fact is something that is a substantial factor in bringing about the injury." (*Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 968-969.) Accordingly, in using the term "substantial factor" to designate the causation element of the Bazils' claim, the instructions and verdict forms here correctly stated the law. The words "substantial" and "factor" are both terms of common usage and ordinary meaning. Indeed, "[h]owever the test is phrased, causation in fact is ultimately a matter of probability and common sense." (*Osborn v. Irwin Memorial Blood Bank* (1992) 5 Cal.App.4th 234, 253.) The Bazils identify nothing in the instruction or special verdict forms regarding the "substantial factor" requirement that would elude a jury's common sense. We see no need for any further instruction on the topic.

When "'"'the court gives an instruction correct in law,'"'" as it did here, appellants cannot gain reversal by complaining the instruction "'"'is too general, lacks clarity, or is incomplete.'"'" (*Metcalf, supra*, 42 Cal.4th at p. 1131.) If the Bazils desired a clarifying or pinpoint instruction on the nature of a substantial factor in causing harm, it was incumbent upon them to ask for one. (*Suman v. BMW of North America* (1994) 23 Cal.App.4th 1, 9.) Their instructional claim fails.

3. *Sufficiency of the Evidence Regarding the Jury's Adverse Interest Finding*

The Bazils also challenge the sufficiency of the evidence to support the jury's special verdict conclusion that Gibson was not liable for breach of a fiduciary's duty of undivided loyalty. On this claim, the jury once again found the first element was satisfied: Gibson was Bazil's fiduciary because he was his "long-term trusted mentor, business coach, and advisor in a trusted, confidential relationship."

But the jury again found no liability. Specifically, as to the alleged breach of undivided loyalty, the jury found that Gibson neither "knowingly act[ed] against Roderick Bazil's interests in connection with the investment in BodHD, Inc.," nor acted "on behalf of a party whose interests were adverse to Roderick Bazil in connection with the investment." The Bazils attack the "adverse party" portion of this finding.

The Bazils contend the jury was *required* to conclude Gibson acted on behalf of a party, himself, whose interests were adverse to theirs. They assert: "It is undisputed that Gibson did not avoid self-dealing." The Bazils add, "The duty of loyalty—generally, the duty to avoid self-dealing—is the duty most characteristic of a fiduciary relationship, although it is not the only fiduciary duty." The Bazils cite the compensation Gibson earned as a percentage of capital he attracted to BodHD as evidence of alleged self-dealing. We must, however, view the evidence in the light most favorable to the jury's verdict. (*Regalado, supra*, 3 Cal.App.5th at pp. 595-596.)

The jury reasonably could attach significance to the manner in which Gibson took that compensation, in BodHD stock, rather than cash or some other form of payment. With payment made in this manner, Gibson's remuneration was tied to BodHD's performance in the exact same manner as was the Bazils' stock investment. Consequently, the jury could reasonably conclude that Gibson's interest was not adverse to the Bazils', but instead it was exactly the same as theirs: to see the stock increase in value. There was no evidence Gibson placed himself in a better position than the Bazils. When BodHD's stock price decreased and the company ultimately failed, Gibson and the Bazils all lost their investments. Substantial evidence therefore supports the jury's verdict.

4. *Evidence Regarding Common Law Securities Violations*

The Bazils contend the trial court erred by precluding evidence of alleged common law violations Gibson committed that governed the sale of securities before the enactment of federal and California statutory provisions regulating the domain. The Bazils rely on general authority holding that California's Corporate Securities Law of 1968 does not displace common law actions for securities fraud. (See, e.g., *Bowden v. Robinson* (1977) 67 Cal.App.3d 705, 711.) In a pretrial ruling that evidence regarding alleged securities violations was irrelevant, the trial court decided, "it is enough to conclude, as the court does, that such claims are not alleged and therefore not among the issue[s] framed by the pleadings." It is not clear whether the Bazils raised their claim of common law securities violations below as they provide no specific page citations in this regard. In any event, the court's ruling appears to extend to violations of securities law whether they were of recent or older vintage. The court observed, "The complaint here does not allege—and it seeks no remedy for—*any* violation of federal or state securities laws or regulations." (Italics added.)

The Bazils' attempt to inject alleged common law securities violations into the case on appeal is puzzling. They argue that the unspecified violations were relevant to their claims for misrepresentation and breach of fiduciary duty. They seem to assume as "[g]iven" an "overlay of these alleged securities activities" with their fraud claims, including fraud in the form of misrepresentation and breach of fiduciary duty as a species of constructive fraud. They seem to believe that, because breach of fiduciary duty is a common law cause of action, evidence of common law securities "activities" or violations not displaced by the statutory or regulatory framework of modern federal or state securities law should have been admissible to frame the scope of Gibson's common law fiduciary duties.

The argument is presented as trial court error in excluding evidence. The standard of review for such error is well-established. Trial courts have broad discretion over the admission or exclusion of evidence at trial; we review the court's determinations under the deferential abuse of discretion standard. (*Continental Ins. Co. v. Superior Court* (1995) 32 Cal.App.4th 94, 107-108.) The Bazils do not assert they sought to amend their complaint to allege causes of action for violation of common law or modern federal and state statutory or regulatory provisions governing securities. The crux of their claim is this: while the court excluded such evidence because Bazil did not otherwise allege any statutory securities violations, the court erred when it did not consider whether the allegations in the complaint regarding Gibson's alleged securities-related activities were broad enough to allow for the admission of evidence of common law securities violations.

There are two problems with this approach. First, the Bazils do not provide record citations in their briefs to show they made this argument to the trial court. A party must "'support the arguments in its briefs by appropriate reference to the record, which includes providing exact page citations.'" (*Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856.) Issues not raised in the trial court are forfeited on appeal.

(*Perez v. Grajales* (2008) 169 Cal.App.4th 580, 591-592.) We presume the trial court's rulings are correct unless and until the appellant affirmatively demonstrates error (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 566); a lower court does not err "in failing to conduct an analysis it was not asked to conduct." (*People v. Partida* (2005) 37 Cal.4th 428, 435.) It does not appear that the Bazils argued below for the admission of evidence concerning common law securities violations. They may not do so now for the first time on appeal.

Second, before an alleged error in excluding evidence may be considered on appeal, the record must show the "substance, purpose, and relevance of the excluded evidence was made known to the court [below by] an offer of proof." (Evid. Code, § 354.) This requirement enables the trial court to make an informed ruling and "provide[s] the reviewing court with the means of determining error and assessing prejudice." (*People v. Schmies* (1996) 44 Cal.App.4th 38, 53.) "[A]n offer of proof must be specific. It must set forth the actual evidence to be produced and not merely the facts or issues to be addressed and argued." (*Ibid.*)

Here, the general block citations to large swaths of the record that the Bazils provide in their reply brief do not show that they made offers of proof to the trial court related to specific evidence concerning alleged common law securities violations that Gibson allegedly committed. Instead, in seeking to have their financial expert testify regarding securities licensing requirements, "trade practices in the financial services industry," and other matters governed by modern securities law, it appears the Bazils sought to have their expert testify regarding modern requirements, rather than common law rules. In any event, securities licensing and trade practices under the common law have limited application to modern securities practice. If the Bazils did seek to offer evidence of common law practices or requirements, the trial court's exclusionary ruling did not constitute an abuse of discretion.

DISPOSITION

The judgment is affirmed. Gibson is entitled to his costs on appeal.

GOETHALS, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

MOORE, J.